

**SEPARATE STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, *Second Further Notice of Proposed Rulemaking*, FCC 08-128

In the seven years since 9/11, three years since Hurricane Katrina, and one year since we began the most recent auction of the 700 MHz spectrum band, we have learned two hard and disappointing lessons. First, that America desperately needs to improve the communications tools available to its heroic first responders. And, second, that achieving this task is not going to be easy.

As I have stated before, I believe the nation's most prudent response in the terrifying days following 9/11 would have been to build a dedicated, federally-funded, interoperable national broadband network for first responders. However, as I explained last month in testimony before the Telecommunications and Internet Subcommittee of the House Energy and Commerce Committee, that option is no longer on the table. So I believe the FCC is left with the sobering conclusion that a public-private shared model represents the last, best chance we have at using the 700 MHz spectrum band to improve communications for state and local public safety users. I still believe that today.

Nevertheless, I think we need to begin the process of trying to create such a network with a healthy dose of realism. Even if we roll up our sleeves and dedicate ourselves this summer to coming up with realistic network specifications, the truth is that we still are not assured of coming up with a workable solution. What we are trying to do here is conduct the most difficult FCC auction ever in an extraordinarily difficult economic environment. At the same time, I *do* know with 100% certainty that if we give any less than the full measure of our efforts, the result will assuredly be that the needs of public safety will continue to go unmet. I, for one, am eager to begin this challenge—and will give the process nothing less than my best.

I approve today's item—kicking off the process of considering a new public-private sharing model—with great hope that we can improve public safety in the way that I believe all my colleagues seek. I hope that public safety will devote its best engineers and wisest minds to the task. We need the best thinking and the best experts they are capable of providing to this process. I hope that the wireless industry—which has profited handsomely from use of the public airwaves—will participate in this process with the full measure of its talent, ingenuity, and public spiritedness. And—most of all—I hope that the Commission will probe far and wide for the finest and most visionary engineers, technologists, economists, and financial experts to inform our decision-making. It is going to take all that—and then some—to get this done.

I understand that we need to move as quickly as possible here, because the need for improved communications grows more pressing with each day. I am not afraid to push hard, work long hours on this process and make difficult decisions. But at the same time, the ultimate acid test here has to be whether we are developing a set of rules that will create a network that meets public safety's broadband and interoperability needs. To me, this means that the time for deferring uncertainty to a post-auction negotiation process is over. Now that we are not facing a hard-and-fast auction deadline, the right course is to work out the difficult questions in advance—thus providing much needed certainty and predictability to public safety, potential bidders, their investors, the public, the FCC and Congress. And make no mistake about it, if I do not think that we have developed workable and specific network specifications before a future auction, I will not hesitate to say that we need to go back to the drawing board and get it right before proceeding any further.

Judged against this set of aspirations, today's item has encouraging aspects as well as some causes for concern. On the happy side of the ledger, we have given interested parties 30 days for comments and 15 days for reply comments on this Second Notice—more than was initially contemplated when this item was circulated. We have also committed in today's item to an additional further notice of proposed rulemaking that will tee up very specific, proposed rules for the public-private sharing concept, which will allow the parties to aim at a specific proposal and help us assess whether it will actually produce the outcome we need. Given the uncertainties of the financial markets today, it is certainly essential that we take every precaution to make sure that there are no unnecessary specifications in our rules that would discourage investment.

My concern stems from the fact that our plans to bring the best engineering and economics talent to the Commission to aid it in its deliberations are still far from finalized, long after Congress in its oversight capacity and many leading experts have warned us that technical and financial sophistication is essential to making this process work. I am disappointed that we cannot make use of the Commission's Technical Advisory Council—a body of distinguished engineers that is supposed to provide the Commission with unbiased, expert technical guidance, but which, over a year and half after having its charter renewed, still has no members and no Chair. I also wish that the Commission had already finalized consulting or other arrangements for leading engineers to provide us with their best thoughts and guidance, but I am encouraged by the Chairman's willingness to bring this to a speedy resolution. I also appreciate that the Chairman and my colleagues have shown willingness to hold one en banc hearing this summer to inform the process—though I would have preferred more such hearings wherein the experts could come before us and put their thoughts to the test of expert public discussion. I also think it is good news that we are establishing a working group here at the FCC that will put our best experts on public safety directly on the task at hand.

I want to thank the Wireless and Public Safety and Homeland Security Bureaus for their hard work in drafting this lengthy item on a very tight timeframe, and our Office of Engineering and Technology for their work in developing a short technical appendix to today's item. I hope the item we release today will jumpstart a detailed and substantive

discussion of the issues before us. I believe the item tees up the important questions, and I appreciate the willingness of my colleagues to allow certain additions from my office as well as to offer their own. I also urge interested parties to raise any important issues that they feel the item does not expressly address. We have written the item broadly, to solicit *any* useful comment—and I hope that the responses we receive will be thoughtful, detailed and cover the waterfront of issues.

In particular, I hope that parties will be extremely specific in discussing what functions they believe this public safety network needs to fulfill and what network specifications are necessary to meet these needs. After all, the network that a highway patrol officer needs when cruising along at 100 mph with a high-gain antenna on the roof is quite different than the network required by a firefighter about to plunge into a 40-story glass and steel building. Similarly, a network that is used for everyday voice communications is quite different from one suitable for mission-critical functions, and different still than one which sends still pictures and even streaming video. Which of these different needs are we attempting to meet? We also need to understand how the network we build will be interoperable with existing public safety networks. A network that does not solve the broader problem of inter-agency and inter-service interoperability would, by any measure, be a tragic opportunity missed.

Even beyond the daunting technical issues, we also need to resolve difficult problems of governance and economic incentives. For example, how can we ensure that the public safety broadband licensee has adequate funding to engage in planning and support its ongoing operations? Is USF funding a possible answer? Or the Telecommunications Development Fund? And we need to look at how to ensure that public safety entities can actually afford to use this system. What pricing plans are consistent with the needs of local jurisdictions to meet fixed budgets? What rules for use of the network by public safety, either for free or at a discounted rate, will the economics of this arrangement permit? After all, the elephant in the room is that we need to make sure that our rules allow the commercial partner a reasonable opportunity to turn a profit in the long-term, or else we will never find a bidder and the network will go unbuilt. We also need to understand if innovative technologies—like multi-mode satellite handsets, or dividing the commercial block into two or more blocks with varying degrees of population density—can improve the ability of commercial licensees to serve their public safety partners.

These governance and economic questions go way beyond discrete issues like reserve price and default penalty (which are important in their own right). What the Commission needs to do is examine the full package of incentives we create, taken as a whole. Unless we are capable of this broad-ranging and complex inquiry, we simply cannot be assured of a better result than the last time around. This simply underscores to me the importance of issuing proposed rules and allowing for comment before issuing final rules. So I am pleased that we now have a commitment to proceed with a Third Notice which will be altogether specific in laying out what the proposed rules are. I would have liked more time for comment on those, but this is the best that could be achieved.

I also have to register some discomfort over the portions of the item that solicit comment on the possibility of stating, up-front, that if this auction does not yield a bidder it will be re-auctioned for commercial purposes. This proceeding is about establishing a viable public-private partnership to enhance public safety. It would be unfortunate if anyone was able to conclude that by simply torpedoing the partnership concept, they can move quickly to a purely commercial auction. This item could inadvertently send the message that a commercial outcome is the likely outcome of this process. The commercial scenario raises other and important questions for another day—one that hopefully doesn't ensue. While I accept that we need to consider different perspectives on this issue, I also believe that, speaking practically, our public safety mission is best served if commenters in this process and bidders in the auction are focused with laser-like precision on trying to make the public-private model work. As I stated earlier, it's going to take 100 percent focus and dedication to get this right. Any provisions that encourage gaming of the system or distract from this key objective are highly counterproductive in my view. I also think we will need to look long and hard at some point in the process about how much time potential bidders need to develop business plans for this unique public-private proposition—as I've mentioned before, investors assure me that the financial markets are as bad as they have been in a long time right now, that their recovery is not imminent, and we certainly should not add to these problems by holding an auction too quickly.

Again, I thank everyone who helped develop today's item and who is willing to dedicate the next few months to contributing to the pressing and unbelievably important task we find before us. We're going to need all the help we can get.